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CONNIE ARNOLD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CONNIE ARNOLD,

Plaintiff,

v.

BURGER KING CORPORATION;
SYDRAN FOOD SERVICES, L.P.;
SYDRAN, INC.; SYDRAN
SERVICES, LLC; LO FONG; DOE 1
TRUST; MALL PARKING LOT OWNER
DOE 2; and DOES 3 through 50,
Inclusive,

Defendants.

CASE NO. _____

Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES:** DENIAL OF CIVIL
RIGHTS OF A DISABLED PERSON IN
VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT, AND IN
VIOLATION OF CALIFORNIA'S
DISABLED RIGHTS STATUTES

DEMAND FOR JURY TRIAL

[Proper Intradistrict
Assignment Civil L.R. § 3-2:
San Jose]

_____/

Plaintiff CONNIE ARNOLD, on behalf of herself and other
similarly situated disabled persons, hereby complains of
defendants BURGER KING CORPORATION, a Florida Corporation;
SYDRAN FOOD SERVICES, L.P., a California Limited Partnership;
SYDRAN, INC., a California Corporation, formerly known as Sydran
Services, Inc., and as the general partner of Sydran Food
Services, L.P.; SYDRAN SERVICES, LLC, a Nevada Limited Liability
Company; LO FONG, Individually and As Trustee of the Doe 1
Trust; DOE TRUST 1; MALL PARKING LOT OWNER DOE 2; and DOES 3

1 through 50, Inclusive (hereafter "defendants"), and demands a
2 trial by jury, and alleges as follows:

3
4 **INTRODUCTION**

5 1. Defendant Burger King Corporation is the second
6 largest fast food chain in the world with sales in 2001
7 approaching \$11.2 billion. Defendant Sydran Services, LLC was
8 founded in 1992. Starting with 14 restaurants, and following a
9 growth formula of acquisition and development, Sydran now ranks
10 among the top 10 franchise companies in the United States. It
11 is also one of the "largest holders of Burger King Franchises,"
12 with over 264 restaurants, 12,000 employees, and annualized
13 sales in excess of \$325 million. According to the company's web
14 site, it "continues to pursue ambitious goals for grown and
15 diversification," which includes "a ten year development
16 agreement with Burger King Corporation to develop stores across
17 the country." Sydran states that it "is one of the fastest
18 growing restaurant companies in the country."

19 2. Among its holdings, Sydran owns, operates and
20 leases the subject Burger King Restaurant, company restaurant
21 number 00975, located at or near 175 West Calaveras Boulevard,
22 in Milpitas, Santa Clara County. On information and belief,
23 Burger King Corporation is a co-owner and master lessor of the
24 property.

25 3. The restaurant is totally inaccessible to
26 disabled persons. This is a suit to require the owner-operator-
27 leasing defendants to make the restaurant accessible and usable
28 by disabled person. Defendants maintain barriers at their

1 parking, paths of travel, entrances, dining tables, service and
2 condiment counters, patio, and, most humiliatingly, the public
3 restrooms, that are inaccessible to physically disabled persons
4 who use wheelchairs, including plaintiff Connie Arnold.

5 4. Construction alterations carried out at this
6 facility triggered access requirements under California law, as
7 well as under the requirements of the Americans With
8 Disabilities Act of 1990. As described hereinbelow, plaintiff
9 seeks injunctive relief to require that the subject Burger King
10 Restaurant which she visited and was unable to enter and use on
11 a full and equal basis, be made accessible to disabled persons
12 to meet the requirements of both California law and the
13 Americans With Disabilities Act of 1990. Plaintiff also seeks
14 damages for violation of her Civil Rights, from the day that she
15 visited this Burger King Restaurant until such date as
16 defendants bring its public facilities into full compliance with
17 the requirements of California and federal law.

18
19 **JURISDICTION AND VENUE**

20 5. This Court has jurisdiction of this action
21 pursuant to 28 U.S.C. 1331 for violations of the Americans with
22 Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* Pursuant to
23 pendant jurisdiction, attendant and related causes of action,
24 arising from the same facts, are also brought under California
25 law, including but not limited to violations of California
26 Health & Safety Code Sections 19955 *et seq.*, including Section
27 19959; Title 24 California Code of Regulations; and California
28 Civil Code Sections 54 and 54.1 *et seq.*

1 6. Venue is proper in this court pursuant to
 2 28 U.S.C. 1391(b) and is founded on the fact that the real
 3 property which is the subject of this action is located in this
 4 district and that plaintiff's causes of action arose in this
 5 district.

6 7. **Intradistrict Jurisdiction.** Under Local Rule
 7 3-2(d), this case should be assigned to the San Jose
 8 intradistrict as the real property that is the subject of this
 9 action is located in the San Jose intradistrict and plaintiff's
 10 causes of action arose in the San Jose intradistrict (a property
 11 located in Santa Clara County).

12
 13 **PARTIES**

14 8. Plaintiff Connie Arnold is a qualified
 15 "physically handicapped" or "physically disabled" person, and
 16 requires the use of a wheelchair for mobility. Plaintiff is
 17 informed and believes that each of the defendants herein,
 18 including DOE TRUST 1, MALL PARKING LOT OWNER DOE 2, and DOES 3
 19 through 50, inclusive, is the owner, constructive owner,
 20 beneficial owner, trust, trustee, agent, ostensible agent, alter
 21 ego, master, servant, employer, employee, representative,
 22 franchiser, franchisee, joint venturer, partner, associate,
 23 parent company, subsidiary, department, representative, or such
 24 similar capacity, of each of the other defendants, and was at
 25 all times acting and performing, or failing to act or perform,
 26 within the course and scope of his, her or its authority as
 27 owner, constructive owner, beneficial owner, agent, trust,
 28 trustee, ostensible agent, alter ego, master, servant, employer,

1 employee, representative, franchiser, franchisee, joint
 2 venturer, partner, associate, parent company, subsidiary,
 3 department, representative, or such similar capacity, and with
 4 the authorization, consent, permission or ratification of each
 5 of the other defendants, and is responsible in some manner for
 6 the acts and omissions of the other defendants in proximately
 7 causing the violations and damages complained of herein, and
 8 have approved or ratified each of the acts or omissions of each
 9 other defendant, as herein described. Plaintiff will seek leave
 10 to amend when the true names, capacities, connections, and
 11 responsibilities of defendants BURGER KING CORPORATION; SYDRAN
 12 FOOD SERVICES, L.P.; SYDRAN, INC.; SYDRAN SERVICES, INC.; SYDRAN
 13 SERVICES, LLC; LO FONG; DOE TRUST 1, MALL PARKING LOT OWNER DOE
 14 2, and DOES 3 through 50, inclusive, are ascertained.

15 9. Plaintiff alleges on information and belief that
 16 at all relevant times, defendants BURGER KING CORPORATION;
 17 SYDRAN FOOD SERVICES, L.P.; SYDRAN, INC.; SYDRAN SERVICES, INC.;
 18 SYDRAN SERVICES, LLC; LO FONG; DOE TRUST 1; MALL PARKING LOT
 19 OWNER DOE 2; and DOES 3 through 50, Inclusive, were and are the
 20 owners, operators, lessors and/or lessees of the public
 21 accommodation located at or near Assessor's Parcel Number 022-
 22 25-040, also know as Burger King Restaurant, located at or near
 23 175 West Calaveras Blvd., Milpitas, California. On information
 24 and belief, defendants have a lease arrangement with the
 25 adjacent shopping mall permitting Burger King customers to use
 26 the mall's immediately-adjacent parking facilities while
 27 patronizing the restaurant.

28 10. The facilities of this business, including its

1 entrance, its interior and exterior paths of travel, its service
2 counter facilities, its dining facilities, and its public
3 restrooms, and other public facilities and amenities are each a
4 "public accommodation or facility" subject to the requirements
5 of California Health & Safety Code Sections 19955 et seq. and of
6 the California Civil Code Sections 54, 54.1, and 54.3. At all
7 times relevant to this complaint, defendants have held these
8 facilities open to public use. Such facilities also constitute
9 "public accommodations" or "commercial facilities" subject to
10 the requirements of Sections 302 and 303 of the Americans with
11 Disabilities Act of 1990.

12
13 **FACTUAL STATEMENT**

14 11. Defendants are required by law to provide
15 accessible facilities on each occasion that "alterations,
16 structural repairs or additions" were performed to such
17 facilities pursuant to legal standards then in effect, per
18 Section 19959 of the Health & Safety Code, and under Section 303
19 of the Americans With Disabilities Act (which governs "new
20 construction" and "alterations").

21 12. On information and belief, each such facility
22 has, since July 1, 1970, been newly constructed, and/or
23 undergone "alterations, structural repairs, and additions," each
24 of which has subjected the Burger King Restaurant and its public
25 facilities to disabled access requirements of Section 19959
26 Health & Safety Code, Title 24 of the California Code of
27 Regulations, and/or, for such work occurring since January 26,
28 1992, to the requirements of Section 303 of the Americans With

1 Disabilities Act.

2 13. On Memorial Day weekend and while on a trip to
3 her brother's home in Sunnyvale, California, plaintiff and her
4 mother stopped for a bite to eat at the subject Burger King in
5 Milpitas. Upon arriving in plaintiff's handicap-lift equipped
6 van, they discovered that the designated "accessible" parking
7 space serving the restaurant was too small for plaintiff to
8 safely park and exit the vehicle. The space was not van
9 accessible and it had a raised concrete curb and garden bed
10 adjacent to the accessible parking crosshatch zone. As a
11 result, plaintiff had to park near the drive-thru on at end-
12 space where nobody could park next to her van and thereby
13 obstruct the operation of the lift.

14 14. Because of the inaccessible location of the
15 parking facilities, and the absence of an accessible route,
16 plaintiff was forced to proceed behind parked cars to reach to
17 the entrance. She was also forced to cross the path of travel,
18 and proceed partly along, drive thru aisle. This was a
19 particularly hazardous condition, with a blind spot for cars
20 leaving the drive thru, which defendants apparently recognized
21 through a "Do Not Enter" sign posted in this location. The path
22 of travel lacked a pedestrian crosswalk and ground detection.

23 15. Upon trying to enter the restaurant, plaintiff
24 discovered that the door was far too heavy for her to operate
25 and obviously exceeded the maximum door pressure permitted by
26 code. Consequently, plaintiff had to wait until another
27 customer could open the door for plaintiff (i.e., during a brief
28 period that she was separated from her mother). Once inside the

1 restaurant, plaintiff encountered an inaccessible que line
2 fronting an inaccessibly high counter. The order counter was at
3 near head-height for plaintiff. As a result, the counter clerk
4 handed plaintiff's change to plaintiff's mother because the
5 clerk couldn't easily reach plaintiff. While attempting to
6 retrieve her receipt within the exit line, plaintiff struck a
7 pole obstructing the path of travel from this area, injuring her
8 foot, to her damage.

9 16. Cups were provided for their drinks obtainable
10 from a self-serve counter. However, the counter was too high
11 for plaintiff, plus the metal barrier posed an obstacle in
12 trying to access the counter. Unable to help her mother with
13 the drinks, plaintiff left to locate a table.

14 17. Unable to find an accessible table within the
15 entire restaurant or the patio (all tables where obstructed by
16 partitions, pre-attached seats, or seating areas that obstructed
17 the path of travel through the restaurant), plaintiff was forced
18 to sit near the rear exit at a table that had fixed seats around
19 it. She sat on the one end where she hoped to avoid blocking
20 any aisles with her chair.

21 18. After her meal, plaintiff needed to use the
22 restroom. Plaintiff went to enter and open the women's restroom
23 door, but the wall behind her prevented her from opening the
24 door by herself, so she backed out. This wall separated the
25 restroom entrance from interior restaurant seating, and it was
26 only a barrier for the women's restroom entrance since the men's
27 restroom had no wall barrier. Plaintiff backed up and asked her
28 mother to open the door for her. Plaintiff's mother was behind

1 her as plaintiff entered the first door only to find a narrow
2 hall and another door that opened towards her. Plaintiff was
3 forced to back out again with her mother's assistance, who held
4 the door open. Next, plaintiff was forced, with much
5 difficulty, to try and fit her chair fit inside the vestibule
6 between doors, being careful not run over her mother's toes.
7 The vestibule was hazardous and would have posed a certain trap
8 had plaintiff not had her mother's assistance.

9 19. Upon entering the restroom, plaintiff discovered
10 that the room lacked the necessary turning radius for plaintiff
11 to maneuver safely in and out of the restroom. The women's
12 stall located to the right was far too narrow for plaintiff's
13 use, and totally lacked side transfer space. The stall didn't
14 even have a rear grab bar. The stall faced another totally
15 inaccessible stall. A large round toilet paper dispenser was
16 mounted above the left grab bar obstructing the bar's use. The
17 sanitary toilet seat cover dispenser was mounted behind the
18 toilet in a location plaintiff could not reach.

19 20. Since there was no room inside the stall for a
20 side transfer, plaintiff's wheelchair stuck out the stall door.
21 Plaintiff's mother had to help her pivot all the way around to
22 use the facilities, to plaintiff's strain and bodily injury.
23 Further, plaintiff was left in the humiliating position of using
24 the facilities with the stall door hanging wide open. Plaintiff
25 was embarrassed needing so much help from her mother, and
26 humiliated by having to use the facility while exposed.

27 21. Afterward, plaintiff exited the restaurant
28 through a side door. An angled wrought iron fence obstructed

1 the swing of the heavy exit door, preventing its full opening
2 and plaintiff's safe exit. The configuration of the
3 restaurant's exterior paths of travel once again forced
4 plaintiff to use the drive-thru aisle to reach her parked
5 vehicle.

6 22. On information and belief, other barriers to
7 disabled access at the Burger King Restaurant that defendants
8 were required to remove under state and federal law continue to
9 exist, and include, but are not limited to, inaccessible and
10 improperly signed and configured parking, an inaccessible
11 entrance, inaccessible public telephone facilities, inaccessible
12 service counter facilities, inaccessible dining facilities,
13 inaccessible patio facilities, inaccessible restroom, and
14 inaccessible paths of travel throughout the restaurant.

15 23. As a result of defendants' denial of legally
16 required access to disabled persons and the lack of access on
17 such occasion when plaintiff attempted to use the Burger King
18 Restaurant, plaintiff Connie Arnold suffered a loss of her Civil
19 Rights and her rights as a disabled person to full and equal
20 access to public facilities, suffered severe physical strain and
21 exhaustion from attempting to negotiate barriers, suffered
22 severe physical pain and discomfort, was humiliated and suffered
23 mental and emotional distress and statutory damages, all to her
24 damages as prayed hereinafter in an amount with the jurisdiction
25 of this court.

26 24. Defendants' denial of access has caused plaintiff
27 to suffer physical, psychological, and emotional injuries,
28 including but not limited to humiliation, frustration and anger,

1 and deprived her independence, self-sufficiency and autonomy.
2 Plaintiff would like to return and use the subject Burger King
3 Restaurant on a spontaneous, but full and equal basis. However,
4 she is prevented from doing so by defendants' failure and refusal
5 to provide disabled persons like plaintiff with "full and equal
6 access" to the Burger King Restaurant facilities. Defendants'
7 actions and omissions have caused her physical, mental and
8 emotional distress, and violation of her Civil Rights, all to her
9 damages.

10 25. On information and belief, a number of facilities
11 in the building have been remodeled during the statutory period
12 since July 1, 1970, triggering accessible "path of travel"
13 requirements to each area of alteration, which includes, but is
14 not limited to, accessible public sanitary facilities and a path
15 of travel, complying with ADA and Title 24 standards. On
16 information and belief, defendants have not complied with these
17 legal obligations.

18 26. The "removal" of each of these barriers to use by
19 disabled persons was "readily achievable" under the standards of
20 Section 301(9) of the Americans With Disabilities Act of 1990
21 [42 U.S.C. 12181] at all times herein relevant. Section 303 of
22 the ADA [42 U.S.C. 12183] and California law also required the
23 removal of all such barriers upon performance of "alterations."

24 27. On information and belief, defendants continue to
25 the present date to deny "full and equal access" to plaintiff
26 and to all other disabled persons, in violation of California
27 law, including Health & Safety Code Sections 19955 *et seq.*,
28 Civil Code Sections 54 and 54.1, and Title 24 of the California

1 Code of Regulations (a.k.a. California Building Code). Further,
 2 such denial of access to disabled persons also violates the
 3 requirements of Title III of the federal Americans With
 4 Disabilities Act of 1990, Sections 301 et seq. [42 U.S.C.,
 5 §§ 12181 et seq.] (Hereinafter also called the "ADA").

6
 7 **FIRST CAUSE OF ACTION:**
 8 **BREACH OF STATUTORY PROTECTIONS FOR PHYSICALLY DISABLED PERSONS**

9 28. Plaintiff repleads and incorporates by reference,
 10 as if fully set forth again herein, the allegations contained in
 11 Paragraphs 1 through 27, above.

12 29. Plaintiff Connie Arnold was and is at all times
 13 relative to this complaint a "physically disabled" person or
 14 "physically handicapped" person under standards as defined by
 15 all California statutes using these terms. Plaintiff is also an
 16 "individual with a disability" as defined by Section 54(b) Civil
 17 Code, as well as Section 3(2) of the ADA. Each violation of the
 18 ADA, as plead hereinafter, is incorporated by reference as a
 19 separate violation of Sections 54(c) and 54.1(d) California
 20 Civil Code.

21 30. Health & Safety Code Section 19955 provides in
 22 pertinent part:

23 (a) The purpose of this part is to insure that public
 24 accommodations or facilities constructed in this state with
 25 private funds adhere to the provisions of Chapter 7
 26 (commencing with § 4450) of Division 5 of Title 1 of the
 27 Government Code. For the purposes of this part "public
 28 accommodation or facilities" means a building, structure,
 facility, complex, or improved area which is used by the
 general public and shall include auditoriums, hospitals,
 theaters, restaurants, hotels, motels, stadiums, and
 conventions centers.

1 31. Health and Safety Code Section 19956, which
2 appears in the same chapter as 19955, provides, in pertinent
3 part: "[a]ll public accommodations constructed in this state
4 shall conform to the provisions of Chapter 7 (commencing with
5 § 4450) of Division 5 of Title 1 of the Government Code...."

6 32. Section 19956 Health & Safety Code was operative
7 July 1, 1970, and is applicable to all public accommodations
8 constructed or altered after that date. On information and
9 belief, portions of the subject Burger King Restaurant were
10 constructed and/or altered after July 1, 1970, and portions of
11 the subject building were structurally remodeled, altered and
12 have undergone structural repairs or additions after July 1,
13 1970. Such construction required such building and its public
14 accommodation facilities to be subject to the requirements of
15 Part 5.5, Sections 19955, et seq., of the Health and Safety
16 Code, which requires provision of access upon "alterations,
17 structural repairs or additions" per Section 19959 Health &
18 Safety Code, or upon a change of occupancy (a form of
19 "alteration").

20 33. Pursuant to the authority delegated by Government
21 Code Section 4450, et seq., the State Architect promulgated
22 regulations for the enforcement of these provisions. Effective
23 January 1, 1982, Title 24 of the California Administrative Code
24 adopted the California State Architect's Regulations and these
25 regulations must be complied with as to any modifications of the
26 subject building occurring after that date. Any alterations of
27 the building after January 1, 1982 required compliance with the
28 Title 24 regulations then in effect, including that an

1 accessible path of travel leading to such facility from the
2 adjoining parking facilities. Prior to 1982, similar
3 requirements were incorporated into the law from the American
4 Standards Association. On information and belief, one or more
5 of the constructions of and alterations upon and modifications
6 of the subject facilities occurred during the period of time
7 that sections of the Health and Safety Code have provided that
8 all buildings and facilities used by the public must conform to
9 each of the standards and specifications described in the
10 American Standards Association Specifications, and as to
11 alterations occurring after January 1, 1982, to the standards of
12 Title 24, the State Architect's Regulations.

13 34. Plaintiff Connie Arnold is informed and believes
14 and therefore alleges that defendants, and their predecessors in
15 interest as owners, operators and/or lessors of the subject
16 public accommodation (for which the defendants as current
17 owners, operators and/or lessors of the building are
18 responsible), and each of them caused the subject property to be
19 constructed, altered and maintained in such a manner that
20 physically disabled persons were denied full and equal access
21 to, within and throughout said facilities, and full and equal
22 use of said building. Further, on information and belief,
23 defendants and each of them have continued to maintain and
24 operate such building and its facilities in such condition up to
25 the present time, despite actual and constructive notice to such
26 defendants, and each of them, that the configuration of the
27 building was in violation of the Civil Rights of disabled
28 persons, such as plaintiff Connie Arnold. Such construction,

1 modification, ownership, operation, maintenance and practices of
 2 such a public facility is in violation of law as stated in Part
 3 5.5, Sections 19955ff Health and Safety Code, Sections 54 and
 4 54.1, et seq., Civil Code, and elsewhere in the laws of
 5 California.

6 35. On information and belief, the subject building
 7 and the defendants and each of them have denied full and equal
 8 access to disabled persons in other respects due to non-
 9 compliance with requirements of Title 24 of the California Code
 10 of Regulations, and of other provisions of disabled access legal
 11 requirements. Additionally, maintaining the barriers specified
 12 in this complaint is independently a violation of both Title 24
 13 of the California Building Code, and of Sections 54 and 54.1
 14 Civil Code and their guarantee of "full and equal" access to all
 15 public facilities (as pled in the second cause of action, and
 16 also repled and incorporated herein by reference, as if fully
 17 restated hereafter), in conjunction with Section 19955ff, per
 18 James Donald v. Cafe Royalé (1990) 218 Cal.App.3d 168.

19 36. Injunctive Relief - The acts and omissions of
 20 defendants as complained of continue on a day-to-day basis to
 21 have the effect of allowing defendants to wrongfully exclude
 22 plaintiff, and other similarly situated members of the public
 23 who are physically disabled, from full and equal access to the
 24 subject Burger King Restaurant. Such acts and omissions are the
 25 continuing cause of humiliation and mental and emotional
 26 suffering to plaintiff and other similarly situated persons in
 27 that these actions treat them as inferior and second class
 28 citizens and serve to discriminate against them, so long as

1 defendants do not provide a properly accessible, safe and equal
2 use of such facilities. Said acts have proximately caused and
3 will continue to cause irreparable injury to plaintiff and other
4 similarly situated persons if not enjoined by this court.

5 37. Plaintiff seeks injunctive relief, pursuant to
6 Section 19953 Health and Safety Code and Section 55 Civil Code,
7 prohibiting those of the defendants that currently own, operate,
8 and/or lease (from or to) the subject Burger King Restaurant,
9 from maintaining architectural barriers to the use by disabled
10 persons of public accommodations and facilities, in violation of
11 Part 5.5, Sections 19955ff Health and Safety Code. Plaintiff
12 seeks to require such defendants to create safe and properly
13 accessible facilities.

14 38. Attorneys' Fees - As a result of defendants' acts
15 and omissions in this regard, plaintiff has been required to
16 incur legal expenses and hire attorneys in order to enforce
17 plaintiff's rights and that of other similarly situated persons,
18 and to enforce provisions of the law protecting access for the
19 disabled, and prohibiting discrimination against the disabled,
20 and to take such action both in her own interest and in order to
21 enforce an important right affecting the public interest.
22 Plaintiff therefore seeks recovery of all reasonable attorneys'
23 fees, litigation expenses and costs incurred, pursuant to the
24 provisions of Section 1021.5 of the Code of Civil Procedure.
25 Plaintiff additionally seeks attorneys' fees and costs pursuant
26 to Section 19953 Health and Safety Code.

27 WHEREFORE, plaintiff prays for relief as hereinafter
28 stated.

**SECOND CAUSE OF ACTION:
 VIOLATION OF DISABLED RIGHTS ACT,
 CIVIL CODE §§ 54, 54.1, 54.3 ET SEQ.
 DENIAL OF FULL AND EQUAL ACCESS TO A PHYSICALLY DISABLED PERSON**

39. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 38, above.

40. At all times relevant to this action, California Civil Code Sections 54 and 54.1 have provided that physically disabled persons are not to be discriminated against because of physical handicap or disability. Section 54 Civil Code provides:

Individuals with disabilities shall have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.

Section 54.1 Civil Code provides that:

(a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities... and privileges of all common carriers, airplanes, motor vehicles... or any other public conveyances or modes of transportation... hotels, lodging places, places of public accommodation and amusement or resort, and other places to which the general public is invited, subject only to the conditions or limitations established by law, or state or federal regulations, and applicable alike to all other persons.

41. California Civil Code Section 54.3 provides that any person or corporation who denies or interferes with admittance to or enjoyment of the public facilities as specified in Section 54 and 54.1 Civil Code is liable for EACH such offense for the actual damages and any amount up to a maximum of three times the amount of actual damages but in no case less

1 than \$1,000 and such attorneys' fees that may be determined by
2 the Court in addition thereto, suffered by any person denied any
3 of the rights provided in Sections 54 and 54.1, for services
4 necessary to enforce those rights.

5 42. As a result of the refusal by defendants and each
6 of them to comply with statutory requirements or otherwise
7 provide reasonable access for disabled persons to the subject
8 public facilities, plaintiff Connie Arnold, and other similarly
9 situated persons, were denied and continue to be denied their
10 rights to full and equal access to, and use of, public
11 facilities, and were and continue to be discriminated against on
12 the sole basis that they are physically disabled and unable to
13 make full and equal use of the facilities. Defendants' acts
14 have caused plaintiff physical and psychological injury and
15 pain, including fatigue, stress and strain in attempts to
16 negotiate barriers, and emotional distress and general damages.

17 43. Plaintiff is a person within the meaning of Civil
18 Code Sections 54 and 54.1 whose rights have been infringed upon
19 and violated by the defendants. Plaintiff has been denied full
20 and equal access on a day-to-day basis since her initial visit
21 of on or about May 24, 2003, on each day in which full and equal
22 access to such facility was denied and continuously deterred.
23 On information and belief, defendants have failed to act to
24 provide full and equal public access to their subject Burger
25 King Restaurant, and continue to operate in violation of the law
26 and continue to discriminate against physically disabled persons
27 by failing to allow access to their building, and make
28 reasonable modifications in policy respecting servicing the

1 disabled who cannot enter or use facilities on a full and equal
2 basis.

3 44. At all times since plaintiff's initial visit to
4 the subject Burger King Restaurant of on or about May 24, 2003,
5 and on information and belief for periods prior to this date,
6 defendants were on notice of the requirements of the law
7 relating to provision for full and equal disabled access.
8 Especially as defendants were on full notice, each day that
9 defendants have continued to deny access to disabled persons
10 constitutes a new and distinct violation of plaintiff's right to
11 full and equal access to this public facility, in violation of
12 Sections 54 and 54.1, et seq. Civil Code. In the event of a
13 default judgment against any particular defendant, plaintiff
14 will seek an injunction requiring provision of accessible
15 parking facilities, paths of travel, accessible public telephone
16 facilities, accessible entrance facilities, accessible service
17 counter facilities, accessible dining facilities, accessible
18 dining patio facilities, accessible circulation throughout the
19 restaurant, and accessible restroom facilities (all as
20 identified in paragraphs 13 through 22), plus daily damages of
21 \$1,000 per day from the date of plaintiff's visit to the subject
22 Burger King Restaurant on or about May 24, 2003, plus reasonable
23 attorneys' fees, litigation expenses and costs as set by the
24 court, until it is brought into full compliance with state and
25 federal access laws protecting the rights of the disabled.

26 45. Further, any violation of the Americans With
27 Disabilities Act of 1990 (as pled in the Third Cause of Action
28 hereinbelow, the contents of which are repled and incorporated

1 herein, word for word, as if separately repled), also
2 constitutes a violation of Section 54(c) and Section 54.1(d)
3 California Civil Code, thus independently justifying an award of
4 damages and injunctive relief pursuant to California law on this
5 basis, including but not limited to Civil Code Sections 54.3 and
6 55.

7 46. Punitive Damages, § 3294 Civil Code - The actions
8 of defendants, and each of them, over the period of time prior
9 to and since the dates of plaintiff's visit of May 24, 2003,
10 have been despicable and willful, and done in conscious
11 disregard and complete indifference of the rights of disabled
12 persons and of the public, and have been oppressive, and have
13 evidenced actual or implied malicious intent toward those
14 members of the public such as plaintiff, who, without
15 justification, and in violation of the law, have been denied
16 full and equal access to this public facility. Plaintiff prays
17 for an award of punitive damages against said defendants and
18 each of them pursuant to Section 3294 Civil Code in an amount
19 sufficient to make a profound example of defendants and
20 discourage others from discrimination and/or the conscious
21 disregard for the rights and safety of disabled persons.
22 Plaintiff does not know the financial worth of such defendants
23 or the amount of punitive damages sufficient to accomplish the
24 public purposes of Section 3294 Civil Code and seeks appropriate
25 damages according to proof.

26 47. As a further basis for punitive damages,
27 plaintiff alleges that defendants either ignored, or failed to
28 act upon, specific complaints made to defendants, and plaintiff

1 is further informed and believes that prior to her visit pled
2 above, and after such visit, defendants, and each of them, had
3 been notified that disabled persons had complained of and/or
4 previously suffered similar denials of full and equal access,
5 similar to that complained of herein. Despite being informed of
6 such effect on disabled persons and the manner in which their
7 practices and lack of accessible facilities would continue to
8 discriminate against disabled persons on a day-by-day basis,
9 said defendants knowingly and willfully failed to provide
10 disabled accessible facilities and services, and have refused to
11 act to rectify this situation and provide full and equal access
12 for disabled persons up to the date of the filing of this
13 Complaint. Said conduct with knowledge of the effect it was
14 having on physically disabled persons constituted and continues
15 to constitute intentional and/or despicable conduct in willful
16 and conscious disregard of the rights of plaintiff and of other
17 similarly situated disabled persons, justifying the imposition
18 of punitive and exemplary damages per Section 3294 Civil Code.

19 48. Plaintiff has been damaged by defendants'
20 wrongful conduct and seeks the relief that is afforded by
21 Sections 54.1, 54.3 and 55 of the Civil Code. Plaintiff seeks
22 actual damages, and statutory and treble damages against
23 defendants for all periods of time mentioned herein, as well as,
24 punitive damages. As to those of the defendants that currently
25 own, operate, and/or lease (from or to) the subject Burger King
26 Restaurant, plaintiff seeks preliminary and permanent injunctive
27 relief to enjoin and eliminate the discriminatory practices and
28 barriers that deny equal access for disabled persons, and for

1 reasonable attorneys' fees.

2 49. WHEREFORE, plaintiff asks this Court to enjoin
3 any continuing refusal by the defendants that currently own,
4 operate, and or lease (from or to) the subject Burger King
5 Restaurant, to grant such access to plaintiff and other
6 similarly situated disabled persons, or alternatively to enjoin
7 operation of the subject Burger King Restaurant as a public
8 accommodation until such defendants comply with all applicable
9 statutory requirements relating to access to physically disabled
10 persons, and that the Court award statutory attorneys' fees,
11 litigation expenses and costs pursuant to Civil Code Section 55,
12 Code of Civil Procedure Section 1021.5, and Health & Safety Code
13 Section 19953, and as further prayed for herein.

14 WHEREFORE, plaintiff prays for damages and injunctive
15 relief as hereinafter stated.

16
17 **THIRD CAUSE OF ACTION:**
18 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990**
19 **42 USC §§ 12101ff**

20 50. Plaintiff repleads and incorporates by reference,
21 as if fully set forth again herein, the factual allegations
22 contained in Paragraphs 1 through 49, above.

23 51. Pursuant to law, in 1990 the United States
24 Congress made findings per 42 U.S.C. Section 12101 regarding
25 physically disabled persons, finding that laws were needed to
26 more fully protect "some 43 million Americans with one or more
27 physical or mental disabilities;" that "historically society has
28 tended to isolate and segregate individuals with disabilities;"
that "such forms of discrimination against individuals with

1 disabilities continue to be a serious and pervasive social
 2 problem;" that "the Nation's proper goals regarding individuals
 3 with disabilities are to assure equality of opportunity, full
 4 participation, independent living and economic self sufficiency
 5 for such individuals;" and that "the continuing existence of
 6 unfair and unnecessary discrimination and prejudice denies
 7 people with disabilities the opportunity to compete on an equal
 8 basis and to pursue those opportunities for which our free
 9 society is justifiably famous..."

10 52. Congress stated as its purpose in passing the
 11 Americans with Disabilities Act (42 USC § 12101(b)):

12 It is the purpose of this act -

13 (1) to provide a clear and comprehensive national
 14 mandate for the elimination of discrimination against
 individuals with disabilities;

15 (2) to provide clear, strong, consistent, enforceable
 16 standards addressing discrimination against individuals
with disabilities;

17 (3) to ensure that the Federal government plays a
 18 central role in enforcing the standards established in this
 act on behalf of individuals with disabilities; and

19 (4) to invoke the sweep of Congressional authority,
 20 including the power to enforce the 14th Amendment and to
 21 regulate commerce, in order to address the major areas of
discrimination faced day to day by people with
disabilities. (Emphasis added)

22 53. As part of the Americans with Disabilities Act,
 23 Public Law 101-336, (hereinafter the "ADA"), Congress passed
 24 "Title III - Public Accommodations and Services Operated by
 25 Private Entities" (42 U.S.C 12181ff). Among "private entities"
 26 which are considered "public accommodations" for purposes of
 27 this title are a for purposes of this title are Among the public
 28 accommodations identified for purposes of this title were "a

1 restaurant, bar, or other establishment serving food or drink"
2 (§§ 301(7)(B) [42 U.S.C. 12181].)

3 54. Pursuant to Section 302 [42 U.S.C 12182], "[n]o
4 individual shall be discriminated against on the basis of
5 disability in the full and equal enjoyment of the goods,
6 services, facilities, privileges, advantages, or accommodations
7 of any place of public accommodation by any person who owns,
8 leases, or leases to, or operates a place of public
9 accommodation."

10 55. Among the general prohibitions of discrimination
11 included in Section 302(b)(1)(A) are the following:

12 § 302(b)(1)(A)(i): "DENIAL OF PARTICIPATION. - It
13 shall be discriminatory to subject an individual or class
14 of individuals on the basis of a disability or disabilities
15 of such individual or class, directly, or through
16 contractual, licensing, or other arrangements, to a denial
of the opportunity of the individual or class to
participate in or benefit from the goods, services,
facilities, privileges, advantages, or accommodations of an
entity."

17 § 302(b)(1)(A)(ii): "PARTICIPATION IN UNEQUAL BENEFIT -
18 It shall be discriminatory to afford an individual or class
19 of individuals, on the basis of a disability or disabilities
20 of such individual or class, directly, or through
21 contractual, licensing, or other arrangements with the
opportunity to participate in or benefit from a good,
service, facility, privilege, advantage, or accommodation
that is not equal to that afforded to other individuals."

22 § 302(b)(1)(A)(iii): "SEPARATE BENEFIT. - It shall be
23 discriminatory to provide an individual or class of
24 individuals, on the basis of a disability or disabilities
25 of such individual or class, directly, or through
26 contractual, licensing, or other arrangements with a good,
27 service, facility, privilege, advantage, or accommodation
that is different or separate from that provided to other
individuals, unless such action is necessary to provide the
individual or class of individuals with a good, service,
facility, privilege, advantage, or accommodation, or other
opportunity that is as effective as that provided to
others."

1 56. Among the specific prohibitions against
2 discrimination in the ADA include the following:

3 § 302(b)(2)(A)(ii): "A failure to make reasonable
4 modifications in policies, practices or procedures when
5 such modifications are necessary to afford such goods,
6 services, facilities, privileges, advantages or
7 accommodations to individuals with disabilities..."

8 § 302(b)(2)(A)(iii): "A failure to take such steps as
9 may be necessary to ensure that no individual with a
10 disability is excluded, denied services, segregated or
11 otherwise treated differently than other individuals
12 because of the absence of auxiliary aids and services,
13 unless the entity can demonstrate that taking such steps
14 would fundamentally alter the nature of the good, service,
15 facility, privilege, advantage, or accommodation being
16 offered or would result in an undue burden;"

17 § 302(b)(2)(A)(iv): "A failure to remove architectural
18 barriers, and communication barriers that are structural in
19 nature, in existing facilities... where such removal is
20 readily achievable;"

21 § 302(b)(2)(A)(v): "Where an entity can demonstrate
22 that the removal of a barrier under clause (iv) is not
23 readily achievable, a failure to make such goods, services,
24 facilities, privileges, advantages, or accommodations
25 available through alternative methods if such methods are
26 readily achievable." The acts and omissions of defendants
27 set forth herein were in violation of plaintiff's rights
28 under the ADA, Public Law 101-336, and the regulations
promulgated thereunder, 28 CFR Part 36ff.

19 57. The removal of each of the barriers complained of
20 by plaintiff Connie Arnold as hereinabove alleged (i.e., in
21 paragraphs 13 through 22, above) were – at all times on or after
22 January 26, 1992 – "readily achievable."

23 58. Further, at all times herein mentioned,
24 modification of or removal of these barriers was "readily
25 achievable" under the factors specified in the Americans with
26 Disabilities Act of 1990, including but not limited to
27 section 301(9) [42 U.S.C. 12181], and the Regulations adopted
28 thereto.

1 59. Further, if defendants are collectively able to
2 "demonstrate" that it was not "readily achievable" for
3 defendants to remove each of such barriers, defendants have
4 failed to make the required services available through
5 alternative methods which were readily achievable, as required
6 by Section 302 of the ADA [42 U.S.C. 12182].

7 60. "Discrimination" is further defined under
8 Section 303(a)(2) of the ADA, for a facility or part thereof
9 that was altered after the effective date of Section 303 of the
10 ADA in such a manner as to affect or that could affect the
11 usability of the facility or part thereof by persons with
12 disabilities, to include per Section 303(a)(2) [42 U.S.C.
13 12183], "a failure to make alterations in such a manner that, to
14 the maximum extent feasible, the altered portions of the
15 facility are readily accessible to and usable by individuals
16 with disabilities, including individuals who use wheelchairs."
17 Additionally, for alterations to areas of a facility involving a
18 "primary function," discrimination under the ADA, per Section
19 303(a)(2) (42 U.S.C. 12183), also includes the failure of an
20 entity "to make the alterations in such a manner that, to the
21 maximum extent feasible, the path of travel to the altered area
22 and the bathrooms, telephones, and drinking fountains serving
23 the altered area, are readily accessible to and usable by
24 individuals with disabilities." On information and belief, the
25 subject building constitutes a "commercial facility," and
26 defendants have, since the date of enactment of the ADA,
27 performed alterations (including alterations to areas of primary
28 function) to the subject building, and its facilities, public

1 accommodations, and commercial facilities, which fail to provide
2 facilities and paths of travel to such areas that are readily
3 accessible to and usable by individuals with disabilities, in
4 violation of Section 303(a)(2), and the regulations promulgated
5 thereunder, 28 CFR Part 36ff.

6 61. Pursuant to the Americans with Disabilities Act,
7 42 USC 12188ff, Section 308, plaintiff is entitled to the
8 remedies and procedures set forth in Section 204, subsection
9 (a), of the Civil Rights Act of 1964 (42 USC 2000a-3, at
10 subsection (a)), as plaintiff is being subjected to
11 discrimination on the basis of disability in violation of this
12 title or has reasonable grounds for believing that she is about
13 to be subjected to discrimination in violation of Sections 302
14 and 303. On information and belief, defendants have continued
15 to violate the law and deny the rights of plaintiff and of other
16 disabled persons to access this public accommodation since
17 plaintiff Connie Arnold's visit of on or about May 24, 2003.
18 Pursuant to Section 308(a)(2), "[i]n cases of violations of
19 Section 302(b)(2)(A)(iv)... injunctive relief shall include an
20 order to alter facilities to make such facilities readily
21 accessible to and usable by individuals with disabilities to the
22 extent required by this title."

23 62. As a result of defendants' acts and omissions in
24 this regard, plaintiff has been required to incur legal expenses
25 and attorney fees, as provided by statute, in order to enforce
26 plaintiff's rights and to enforce provisions of the law
27 protecting access for disabled persons and prohibiting
28 discrimination against disabled persons. Plaintiff therefore

1 seeks recovery of all reasonable attorneys' fees, litigation
 2 expenses (including expert fees) and costs, pursuant to the
 3 provisions of Section 505 of the ADA (42 U.S.C. 12205) and the
 4 Department of Justice's regulations for enforcement of Title III
 5 of the ADA (28 CFR 36.505). Additionally, plaintiff's lawsuit
 6 is intended not only to obtain compensation for damages to
 7 plaintiff, but also to require the defendants to make their
 8 facilities accessible to all disabled members of the public,
 9 justifying "public interest" attorneys' fees pursuant to the
 10 provisions of California Code of Civil Procedure Section 1021.5.

11 WHEREFORE, plaintiff prays that this Court grant
 12 relief as hereinafter stated:

13
 14 **FOURTH CAUSE OF ACTION:**
 15 **DAMAGES AND INJUNCTIVE RELIEF UNDER THE DISABLED RIGHTS ACT**
FOR VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT

16 63. Plaintiff repleads and incorporates by reference,
 17 as if fully set forth again herein, the allegations contained in
 18 Paragraphs 1 through 62 of this complaint and incorporates them
 19 herein as if separately repled.

20 64. Each violation of the Americans With Disabilities
 21 Act of 1990, as complained of in the Third Causes of Action
 22 hereinabove (the contents of which causes of action have been
 23 incorporated herein as if separately repled), is also a
 24 violation of section 54(c) and section 54.1(d) California Civil
 25 Code, further and independently justifying damages, injunctive
 26 relief, and other statutory relief per sections 54.3 and 55
 27 California Civil Code, all as previously pled.

28 65. Defendants' conduct was despicable and in

1 "conscious disregard" for the rights and safety of plaintiff and
 2 other disabled persons. Plaintiff hereby incorporates by
 3 reference, as if fully replied hereafter, the punitive damage
 4 allegations of paragraphs 46 and 47.

5 66. As a result of defendants' acts and omissions in
 6 this regard, plaintiff has been required to incur legal expenses
 7 and attorney fees, as provided by statute, in order to enforce
 8 plaintiff's rights and to enforce provisions of the law
 9 protecting access for disabled persons and prohibiting
 10 discrimination against disabled persons. Plaintiff therefore
 11 seeks recovery of all reasonable attorneys' fees, litigation
 12 expenses (including expert fees) and costs, pursuant to the
 13 provisions of Section 55 of the Civil Code. Additionally,
 14 plaintiff's lawsuit is intended not only to obtain compensation
 15 for damages to plaintiff, but also to require the defendants to
 16 make their facilities accessible to all disabled members of the
 17 public, justifying "public interest" attorneys' fees pursuant to
 18 the provisions of California Code of Civil Procedure Section
 19 1021.5.

20 WHEREFORE, plaintiff prays for damages and injunctive
 21 relief as hereinafter stated.

22
 23 **FIFTH CAUSE OF ACTION:**
 24 **DAMAGES AND INJUNCTIVE RELIEF UNDER THE UNRUH CIVIL RIGHTS ACT**
FOR VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT

25 67. Plaintiff repleads and incorporates by reference,
 26 as if fully set forth again herein, the allegations contained in
 27 Paragraphs 1 through 66 of this complaint and incorporates them
 28 herein as if separately replied.

1 68. Each violation of the Americans With Disabilities
2 Act of 1990, as complained of in the Third Causes of Action
3 hereinabove (the contents of which causes of action have been
4 incorporated herein as if separately repled), is also a
5 violation of section 51(f) of the Unruh Civil Rights Act,
6 further and independently justifying damages of \$4,000 per
7 offense, injunctive relief, and other statutory relief per
8 sections 52 and common law decision.

9 69. Defendants' conduct was despicable and in
10 "conscious disregard" for the rights and safety of plaintiff and
11 other disabled persons. Plaintiff hereby incorporates by
12 reference, as if fully repled hereafter, the punitive damage
13 allegations of paragraphs 46 and 47.

14 70. As a result of defendants' acts and omissions in
15 this regard, plaintiff has been required to incur legal expenses
16 and attorney fees, as provided by statute, in order to enforce
17 plaintiff's rights and to enforce provisions of the law
18 protecting access for disabled persons and prohibiting
19 discrimination against disabled persons. Plaintiff therefore
20 seeks recovery of all reasonable attorneys' fees, litigation
21 expenses (including expert fees) and costs, pursuant to the
22 provisions of Section 52 of the Civil Code. Additionally,
23 plaintiff's lawsuit is intended not only to obtain compensation
24 for damages to plaintiff, but also to require the defendants to
25 make their facilities accessible to all disabled members of the
26 public, justifying "public interest" attorneys' fees pursuant to
27 the provisions of California Code of Civil Procedure Section
28 1021.5.

SIXTH CAUSE OF ACTION:
VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200
UNFAIR COMPETITION THROUGH VIOLATION OF CALIFORNIA AND STATE LAW
PROTECTING THE RIGHTS OF DISABLED PERSONS

71. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the factual allegations contained in paragraphs 1 through 70 of this complaint and incorporate them herein as if separately repled.

72. On a yearly basis, the defendants are engaged in the business of providing fast food restaurant services and facilities at the Burger King Restaurant throughout the year.

73. Commencing within three years of the date of the original complaint filed in this action, the defendants have committed acts of unfair competition, as defined by Business and Professions Code section 17200, by providing facilities that are inaccessible to the disabled members of the general public, including, but not limited to the acts facilities listed in paragraphs 13 through 22, above, all in violation of standards of sections 54 and 54.1 et seq. Civil Code; Title 24 of the California Administrative Code; sections 4450-4456 Government Code; sections 19952, 19953 and 19955-19959 Health & Safety Code; Title III of the Americans With Disabilities Act of 1990; and the Americans With Disabilities Act Access Guidelines.

74. The acts and practices of the defendants are likely to continue and therefore will continue to mislead to mislead the general public as to the true cost of providing the specified goods and services and their expected availability to members of the public with physical disabilities pursuant to law.

1 75. As a direct and proximate result of the
2 defendants' conduct, defendants have received and continue to
3 receive unfair profits that rightfully belong to members of
4 general public who have been adversely affected by defendants'
5 conduct, such as plaintiff.

6 76. Plaintiff has no adequate remedy at law, and
7 unless the relief requested herein is granted, plaintiff will
8 suffer irreparable harm in that she will continue to be
9 discriminated against and denied access to the specified public
10 facilities. Because plaintiff seeks improvement of access for
11 persons with disabilities, which will benefit a significant
12 portion of the public, plaintiff seeks attorneys' fees pursuant
13 to sections 52, 54.3 and 55 Civil Code, section 1021.5 Code of
14 Civil Procedure, section 19953 Health & Safety Code, and section
15 505 of the Americans with Disabilities Act.

16 77. Defendants' conduct was despicable and in
17 "conscious disregard" for the rights and safety of plaintiff and
18 other disabled persons. Plaintiff hereby incorporates by
19 reference, as if fully repled hereafter, the punitive damage
20 allegations of paragraphs 46 and 47.

21 Wherefore, plaintiff prays that the court grant relief
22 as requested hereinbelow.

23
24 **SEVENTH CAUSE OF ACTION:**
25 **VIOLATION OF GOVERNMENT CODE SECTION 12948**

26 78. Plaintiff repleads and incorporates by reference,
27 as if fully set forth again herein, the factual allegations
28 contained in paragraphs 1 through 77 of this complaint and

1 incorporate them herein as if separately replied.

2 79. Defendants' actions are in violation of
3 Government Code Section 12948, and the corresponding Civil Code
4 Sections 51, 54, and 54.1.

5 80. Plaintiff seeks injunctive relief, statutory and
6 compensatory damages, punitive damages, and attorneys fees under
7 the FEHA.

8 Wherefore, plaintiff prays that the court grant relief
9 as requested hereinbelow.

10
11 **EIGHTH CAUSE OF ACTION:**
12 **NEGLIGENCE PER SE IN INJURING PLAINTIFF DUE TO VIOLATIONS OF**
13 **STATE AND FEDERAL LAW PROTECTING THE DISABLED, AND COMPLETE**
14 **INDIFFERENCE TO THE CERTAIN RESULT**

15 81. Plaintiff repleads and incorporates by reference,
16 as if fully set forth again herein, the factual allegations
17 contained in paragraphs 1 through 80 of this complaint and
18 incorporate them herein as if separately replied.

19 82. Plaintiff incorporates by reference all prayers
20 for relief related to plaintiff's damages.

21 83. Defendants' actions, as previously pled,
22 constitute negligence per se, as they constitute violations of
23 state and federal laws protecting the rights and safety of
24 disabled persons such as plaintiff.

25 84. Defendants' conduct was despicable and done in
26 "conscious disregard" and with "complete indifference" for the
27 rights and safety of plaintiff and other disabled persons,
28 including plaintiff, and the certainty that their rights and
safety would be violated. Therefore, plaintiff hereby

1 incorporates by reference, as if fully replied hereafter, the
2 punitive damage allegations of paragraphs 46 and 47.

3 Wherefore, plaintiff prays that the court grant relief
4 as requested hereinbelow.

5
6 **PRAYER**

7 WHEREFORE, plaintiff prays for an award and relief as
8 follows:

9 1. That those of the defendants that currently own,
10 operate, and or lease (from or to) the subject Burger King
11 Restaurant and its facilities be preliminarily and permanently
12 enjoined from operating and maintaining these public facilities
13 as public accommodations and commercial facilities, so long as
14 disabled persons are not provided full and equal access to the
15 accommodations and facilities, in violation of provided by
16 Sections 54, 54.1, and 55 et seq., of the Civil Code, Sections
17 19955 et seq. Health & Safety Code, Sections 4450, et seq.
18 Government Code, the American Standard Specifications (A117.1-
19 1961), or such other standards, including those of the State
20 Architect's Regulations for Handicapped Access, as found in
21 Title 24 of the California Code of Regulations or other
22 regulations as are currently required by law; and that
23 defendants be ordered to come into compliance with the Americans
24 with Disabilities Act of 1990, including an order that those of
25 the defendants that currently own, operate, and/or lease (from
26 or to) the subject Burger King Restaurant, inter alia, "alter
27 the subject facilities to make such facilities readily
28 accessible to and usable by individuals with disabilities," and

1 institute reasonable modifications in policies and practices,
2 per Section 308 of Public Law 101-336 (the ADA);

3 2. General, compensatory, and statutory damages, and
4 all damages as afforded by Civil Code Sections 54.3, including
5 treble damages, for each violation and each day on which
6 defendants have denied to plaintiff equal access for the
7 disabled, commencing on the date plaintiff's initial visit of
8 May 24, 2003, according to proof.

9 3. General, compensatory, and statutory damages, and
10 all damages as afforded by Civil Code Sections 52, including
11 treble damages, for each violation and each day on which
12 defendants have denied to plaintiff equal access for the
13 disabled under Title III of the ADA, commencing on the date
14 plaintiff's initial visit of May 24, 2003, according to proof.

15 4. A permanent injunction pursuant to Business and
16 Professions Code section 17203 restraining and enjoining the
17 defendants from continuing the acts of unfair competition set
18 forth above;

19 5. During the pendency of this action, a preliminary
20 injunction issue pursuant to Business and Professions Code
21 section 17203 to enjoin and restrain defendants from the acts of
22 unfair competition set forth above;

23 6. Defendants be ordered to restore to the public
24 all funds acquired by the acts of unfair competition set forth
25 above pursuant to Business and Professions Code section 17203;

26 7. Attorney's fees, litigation expenses and costs
27 pursuant to Sections 54.3 and 55 of the Civil Code,
28 Section 19953 Health & Safety Code, Section 1021.5 Code of Civil

1 Procedure, and Section 505 of the ADA;

2 8. Punitive damages pursuant to Section 3294 Civil
3 Code;

4 9. For all costs of suit;

5 10. Prejudgment interest pursuant to Section 3291 of
6 the Civil Code;

7 11. Such other and further relief as the Court deems
8 just and proper.

9
10 Dated: June 20, 2003

Thimesch Law Offices

TIMOTHY S. THIMESCH

11
12 

13 Attorneys for Plaintiff
14 CONNIE ARNOLD

15
16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a jury for all claims for
18 which a jury is permitted.

19
20
21 Dated: June 20, 2003

22 

23 By: TIMOTHY S. THIMESCH
24 Attorneys for Plaintiff
25
26
27
28